IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Special Appeal No. 80 of 2006

Committee of Management
Adarsh Inter College Surai Khet (Bitholi)
District Almora through its Manager,
Sri Joga Singh …… Appellant

Versus

Kailash Nath Harbola
S/o Sri Mohan Chandra Harbola
R/o Badripura, Haldwani,
District Nainital ……. Respondent

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Sri L.P.Naithani, Senior Advocate with Sri B.D.Upadhyaya, Advocate of the appellant.
Sri Manoj Tiwari, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

The appellant Committee of Management has filed this Special Appeal against the impugned judgment dated 19.07.2006 passed in Writ Petition NO. 4089 of 2001 (S/S).

2. Writ Petitioner Kailash Nath Harbola filed the writ petition for the following reliefs:

> "(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 15.07.1996 (Annexure 'XV') approving the termination of the petitioner's services from the back date i.e. with effect from 10.11.1985 in pursuance of the resolution of the Managing Committee dated 23.12.1986;
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> (ii) issue a writ, order or direction in the nature of certiorari quashing the order of termination of the petitioner's services dated 10.12.1992 (Annexure 'XII');

(iii) issue a writ, order or direction in the nature of mandamus directing the respondents to pay the salary to the petitioner;

(iv) issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere with the working of the petitioner;

(v) issue any other suitable writ, order or direction in the nature of writ as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case; and

(vi) award costs of this petition to the humble petitioner throughout.

3. The petitioner, in substance, was challenging the impugned order dated 10.12.1992 whereby he was removed from service w.e.f. 10.11.1985.

4. The petitioner was appointed as Lecturer by the Committee of Management, Adarsh Inter College Surai Khet (Bitholi) district Almora vide order dated 03.11.1979. After completion of the period of probation of one year, he was confirmed on the post of Lecturer w.e.f. 07.11.1980 vide order dated 03.10.1981. After conducting an enquiry about the allegations made against the petitioner, the Committee of Management passed the impugned order of his dismissal dated 10.12.1992, which was made effective from 10.11.1985.

5. The learned Single Judge, agreeing with the submissions advanced on behalf of the writ petitioner, allowed the writ petition vide impugned judgment dated 19.07.2006 on the following grounds mentioned in paras 3 & 4:

> "3. The dismissal order of the petitioner has been passed on 10.12.1992 w.e.f. 10.11.1985 which is without prior approval of the Commission/Board as required under Section 21 of U.P. Secondary Education(Services Selection Boards) Act, 1982 which prescribes restriction on dismissal of teachers. Section 21 is reproduced as under:
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> **" 21. Restriction on dismissal etc. of teachers.-** The Management shall not, except with the prior approval of the Board dismiss any teacher or remove him from service, or serve on him any notice of removal from

> service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void."
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> 4. This section specifically provides that the order passed dismissing a teacher from service without such prior approval shall be void. It is not in dispute that the Board's approval was obtained on 15.07.1996 (Annexure – 15 to the writ petition) but it was not prior approval. Therefore, in view of Section 21 of U.P. Secondary Education (Services Selection Boards) Act, 1982 the order of termination is void. Once the order is itself void by operation of law, no order is required to quash the same as it is non est."

6. Sri L.P. Naithani, the learned Senior Counsel for the appellant submitted that the learned Single Judge while allowing the writ petition ought to have granted liberty to the appellant Committee of Management to pass a fresh order of the termination of petitioner's services in accordance with law as the impugned order of termination of petitioner's services was not quashed on merits but only on the technical ground that no prior approval as required under Section 21 of the Act was obtained.

7. Sri Manoj Tiwari, the learned counsel for the respondent, on the other hand, submitted that any liberty to the appellant Committee of Management to pass fresh order of petitioner's termination would seriously prejudice the petitioner as there was no sufficient ground / material to sustain the order of petitioner's termination even on merits.

8. True, the impugned order is founded on the solitary ground of absence of prior approval under Section 21 of the Act and the other grounds taken by the petitioner in the writ petition have not been examined.

9. On due consideration of the rival submissions of the learned counsel for the parties and the grounds raised by the writ petitioner in the writ petition for challenging the impugned order of his termination, we are of the opinion that the matter deserves to be remanded for a fresh hearing of the writ petition on all the grounds raised by the petitioner in the writ petition.

10. For the foregoing reasons, the impugned judgment dated 19.07.2006 is hereby set aside and the matter is remanded for fresh hearing of the writ petition.

11. With the above order, the Special Appeal stands disposed of.

12. Consequently, CLMA No. 11997 of 2006 also stands disposed of.

13. Post the writ petition for final hearing before the appropriate Single Bench hearing service matters as per the current roster in the week commencing 11.12.2006.

14. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
16.11.2006 16.11.2006

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